

AMENDED IN ASSEMBLY MAY 21, 2002

AMENDED IN ASSEMBLY MAY 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2330

Introduced by Assembly Member Migden

February 21, 2002

An act to amend Sections ~~1942.5 and 1950.2~~ *1950.5 and 1954* of the Civil Code, relating to landlord and tenant.

LEGISLATIVE COUNSEL'S DIGEST

AB 2330, as amended, Migden. Landlord and tenant.

~~(1) Existing law prohibits a lessor from retaliating against a lessee because the lessee has exercised specified rights, if the lessee is not in default on his or her rent. Existing law, in these circumstances, prohibits the lessor from attempting to recover possession of a dwelling in an action or proceeding, causing the lessee to quit involuntarily, increasing the rent, or decreasing any services within 180 days of specified dates. Existing law prohibits a lessee from invoking these rights more than once in a 12-month period. Existing law provides that a court may award punitive damages against a lessor or the agent of lessor in an amount not to exceed \$1,000.~~

~~This bill would prohibit a lessor from retaliating against a lessee after the date the lessee has made a written complaint to the lessor about tenantability or a written or oral complaint about any other concern regarding his or her tenancy, or has made a written or oral complaint, as specified, with an appropriate agency about any concern regarding his or her tenancy. The bill would also prohibit lessor retaliation as~~

~~described above after the filing of appropriate documents commencing a judicial or arbitration proceeding about any concern regarding the lessee's tenancy, or after the lessee or legal occupant lawfully and peaceably exercised or asserted any legal right. The bill would delete the requirement that the lessee not be in default on his or her rent to be permitted to assert these rights. The bill would reduce the time within which a lessee is prohibited from invoking these rights more than once, as described above, to 6 months. The bill would increase the maximum amount that a court may award as punitive damages to \$2,000.~~

(2)

(1) Existing law regulates the amount of security a landlord may demand or receive pursuant to a rental agreement for residential property to be used as a dwelling. It limits that amount to 2 months' rent for unfurnished residential property, and to 3 months' rent for furnished residential property, in addition to rent for the first month, as specified. Existing law defines security for these purposes. Existing law permits landlords to apply security only if reasonably necessary for specified purposes, and prohibits the application of security for defective conditions that preexisted the tenancy or for ordinary wear and tear. Existing law requires a landlord to furnish to the tenant, within 3 weeks of vacating the premises, a copy of an itemized statement indicating the security received and the disposition of the security, as specified.

This bill would redefine security to include any charges imposed at the beginning of tenancy, ~~including~~ *excepting application screening fees, and would specifically include within the definition* costs associated with processing a new tenant, and costs associated with cleaning the property, as specified. The bill would require a landlord to pay interest to the tenant on ~~any security held for more than 6 months,~~ as specified. The bill would define ordinary wear and tear with regard to the application of security to repairs of the dwelling, and would impose on the landlord the burden of proving that a tenant is liable for damages beyond ordinary wear and tear. ~~The bill would require the landlord to inspect the dwelling when the tenant vacates, to give the tenant specified notices in this regard, and would provide that a failure to do so would result in the landlord forfeiting any claim on the security.~~ *The bill would require the landlord, after receiving a specified notice from the tenant, to notify the tenant in writing of the tenant's option to request an initial inspection and the tenant's right to be present at the inspection. If the tenant requests an initial inspection, the bill would require the landlord to make that inspection prior to a final inspection,*

after the tenant vacates, and to provide the tenant with an itemized list of potential deductions from the security, as specified. The bill would require that the tenant have the opportunity to make repairs or clean during the period following the initial inspection until the end of the tenancy. The bill would change the amount of statutory damages for certain violations from \$600 to twice the amount of the security.

(2) Existing law regulates the times and circumstances under which a landlord may enter a tenant's dwelling.

This bill would permit a landlord to enter a tenant's dwelling for the purpose of making an inspection related to the application of a tenant's security to repairs and cleaning.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 1942.5 of the Civil Code is amended to~~
2 ~~read:~~

3 ~~1942.5.—(a) A lessor who retaliates against a lessee because of~~
4 ~~the exercise by the lessee of the following rights is prohibited from~~
5 ~~causing the lessee to quit involuntarily or recovering possession of~~
6 ~~the dwelling in any action or proceeding, or increasing the rent, or~~
7 ~~decreasing any services within 180 days:~~

8 ~~(1) After the date upon which the lessee, in good faith, has~~
9 ~~given notice pursuant to Section 1942, or has made an oral or~~
10 ~~written complaint to the lessor regarding tenantability or any other~~
11 ~~concern regarding his or her tenancy.~~

12 ~~(2) After the date upon which the lessee, in good faith, has filed~~
13 ~~a written complaint, or an oral complaint which is registered or~~
14 ~~otherwise recorded in writing, with an appropriate agency, of~~
15 ~~which the lessor has notice, for the purpose of obtaining correction~~
16 ~~of a condition relating to tenantability or any other concern~~
17 ~~regarding his or her tenancy.~~

18 ~~(3) After the date of an inspection or issuance of a citation,~~
19 ~~resulting from a complaint described in paragraph (2) of which the~~
20 ~~lessor did not have notice.~~

21 ~~(4) After the filing of appropriate documents commencing a~~
22 ~~judicial or arbitration proceeding involving the issue of~~
23 ~~tenantability or any other concern regarding his or her tenancy.~~

~~(5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.~~

~~(6) After the lessee or legal occupant lawfully and peaceably exercised or asserted any right under the law.~~

~~In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (6), inclusive.~~

~~(b) A lessee may not invoke the provisions of subdivision (a) more than once in any six-month period.~~

~~(c) It shall be unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.~~

~~(d) Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his right to do any of the acts described in subdivision (a) or (c) for any lawful cause. Any waiver by a lessee of his or her rights under this section shall be void as contrary to public policy.~~

~~(e) Notwithstanding the provisions of subdivisions (a) to (d), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (c), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or (c). If the statement be controverted, the lessor shall establish its truth at the trial or other hearing.~~

~~(f) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:~~

~~(1) The actual damages sustained by the lessee.~~

~~(2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for~~

1 ~~each retaliatory act where the lessor or agent has been guilty of~~
2 ~~fraud, oppression, or malice with respect to the act.~~

3 ~~(g) In any action brought for damages for retaliatory eviction,~~
4 ~~the court shall award reasonable attorney's fees to the prevailing~~
5 ~~party if either party requests attorney's fees upon the initiation of~~
6 ~~the action.~~

7 ~~(h) The remedies provided by this section shall be in addition~~
8 ~~to any other remedies provided by statutory or decisional law.~~

9 **SEC. 2.**—Section 1950.5 of the Civil Code is amended to read:

10 1950.5. (a) This section applies to security for a rental
11 agreement for residential property that is used as the dwelling of
12 the tenant.

13 (b) As used in this section, “security” means any payment, fee,
14 deposit or charge, including, but not limited to, any payment, fee,
15 deposit, or charge, *except as provided in Section 1950.6*, that is
16 imposed at the beginning of the tenancy to be used to reimburse
17 the landlord for costs associated with processing a new tenant or
18 that is imposed as an advance payment of rent, used or to be used
19 for any purpose, including, but not limited to, any of the following:

20 (1) The compensation of a landlord for a tenant's default in the
21 payment of rent.

22 (2) The repair of damages to the premises, exclusive of
23 ordinary wear and tear, caused by the tenant or by a guest or
24 licensee of the tenant.

25 (3) The cleaning of the premises upon termination of the
26 tenancy necessary to return the unit to the ~~same condition~~ *level of*
27 *cleanliness* it was in at the inception of the tenancy.

28 (4) To remedy future defaults by the tenant in any obligation
29 under the rental agreement to restore, replace, or return personal
30 property or appurtenances, exclusive of ordinary wear and tear, if
31 the security deposit is authorized to be applied thereto by the rental
32 agreement.

33 (c) A landlord may not demand or receive security, however
34 denominated, in an amount or value in excess of an amount equal
35 to two months' rent, in the case of unfurnished residential
36 property, and an amount equal to three months' rent, in the case of
37 furnished residential property, in addition to any rent for the first
38 month paid on or before initial occupancy.

1 This subdivision does not prohibit an advance payment of not
2 less than six months' rent if the term of the lease is six months or
3 longer.

4 This subdivision does not preclude a landlord and a tenant from
5 entering into a mutual agreement for the landlord, at the request of
6 the tenant and for a specified fee or charge, to make structural,
7 decorative, furnishing, or other similar alterations, if the
8 alterations are other than cleaning or repairing for which the
9 landlord may charge the previous tenant as provided by
10 subdivision (e).

11 (d) (1) Any security shall be held by the landlord for the tenant
12 who is party to the lease or agreement.

13 (2) Interest on the security shall be ~~paid the first month of each~~
14 ~~calendar year by the landlord to the tenant on any security held~~
15 ~~more than six months, owed by the landlord to the tenant~~ at the rate
16 of 1 percent less than the Federal Reserve Discount Rate as of
17 December 31st of the preceding calendar year *to be paid upon*
18 *termination of the tenancy or upon the first month of every fifth*
19 *calendar year whichever comes first. In the case where the interest*
20 *is owed on the first month of the fifth calendar year, the tenant may*
21 *deduct interest owed from the rent. It is the intent of the Legislature*
22 *that the one percent difference of interest owed pursuant to this*
23 *subdivision and the Federal Reserve Discount Rate is to be*
24 *retained by the landlord to defray any administrative costs.* Any
25 landlord who violates this paragraph is liable for twice the amount
26 of the accrued interest. This paragraph does not apply in any city,
27 county, or city and county that by charter, ordinance, or regulation
28 requires the payment to tenants of interest on security.

29 (3) The claim of a tenant to the security shall be prior to the
30 claim of any creditor of the landlord.

31 (e) The landlord may claim of the security only those amounts
32 as are reasonably necessary for the purposes specified in
33 subdivision (b). The landlord may not assert a claim against the
34 tenant or the security for damages to the premises or any defective
35 conditions that preexisted the tenancy, for ordinary wear and tear
36 or the effects thereof, whether the wear and tear preexisted the
37 tenancy or occurred during the tenancy, or for the cumulative
38 effects of ordinary wear and tear occurring during any one or more
39 tenancies.

“Ordinary wear and tear” means the deterioration or depreciation in value of a premise that is the result of reasonable and ordinary use by ~~its occupants~~ *the tenant or a guest or licensee of the tenant*. For purposes of this section, ordinary wear and tear is deterioration that occurs through every day usage, rather than unusual damage caused by tenant abuse or carelessness and includes, but is not limited to, deterioration that is rectified by routine painting, carpet replacement, or other *routine* repairs. If a landlord claims a tenant is liable for damages beyond ordinary wear and tear, the landlord bears the burden of proof of the claim.

(f) (1) *Within a reasonable time after the landlord’s receipt of the tenant’s notification of intention to terminate the tenancy, the landlord shall notify the tenant in writing of his or her option to request an initial inspection and of his or her right to be present at the inspection.* At a reasonable time after the notification of ~~the end of a~~ *intention to terminate the tenancy*, the landlord, or an agent of the landlord, shall, *upon the request of the tenant*, make an initial inspection of the premises. ~~The landlord shall notify the tenant of the tenant’s right to be present at this initial inspection.~~ *prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection shall be to allow the tenant an opportunity to make repairs or clean in order to avoid deductions from the security. If a tenant chooses not to request an initial inspection, the duties of the landlord under this subdivision are discharged.*

(2) Based on the inspection, the landlord shall give the tenant an itemized statement specifying *repairs or cleaning that are proposed to be the basis of any deductions from the security deposit* the landlord intends to make pursuant to paragraphs (1) to (4), inclusive of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises. ~~Failure to make the notification or make the inspection and report shall result in the landlord forfeiting any claim on the security.~~

(3) *The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to make repairs or clean in order to avoid deductions from the security.*

1 (4) *Nothing in this subdivision shall prevent a landlord from*
2 *using the security for deductions itemized in the statement*
3 *provided for in paragraph (2) that were not cured by the tenant.*

4 (5) *Nothing in this subdivision shall prevent a landlord from*
5 *using the security for any purpose specified in paragraphs (1) to*
6 *(4), inclusive, of subdivision (b) that occurs between completion*
7 *of the initial inspection and termination of the tenancy.*

8 (g) Within three weeks after the tenant has vacated the
9 premises, the landlord shall furnish the tenant, by personal
10 delivery or by first-class mail, postage prepaid, a copy of an
11 itemized statement indicating the basis for, and the amount of, any
12 security received and the disposition of the security and shall
13 return any remaining portion of the security to the tenant.

14 (h) Upon termination of the landlord's interest in the premises,
15 whether by sale, assignment, death, appointment of receiver or
16 otherwise, the landlord or the landlord's agent shall, within a
17 reasonable time, do one of the following acts, either of which shall
18 relieve the landlord of further liability with respect to the security
19 held:

20 (1) Transfer the portion of the security remaining after any
21 lawful deductions made under subdivision (e) to the landlord's
22 successor in interest. The landlord shall thereafter notify the tenant
23 by personal delivery or by first-class mail, postage prepaid, of the
24 transfer, of any claims made against the security, of the amount of
25 the security deposited, and of the names of the successors in
26 interest, their address, and their telephone number. If the notice to
27 the tenant is made by personal delivery, the tenant shall
28 acknowledge receipt of the notice and sign his or her name on the
29 landlord's copy of the notice.

30 (2) Return the portion of the security remaining after any
31 lawful deductions made under subdivision (e) to the tenant,
32 together with an accounting as provided in subdivision (g).

33 (i) Prior to the voluntary transfer of a landlord's interest in the
34 premises, the landlord shall deliver to the landlord's successor in
35 interest a written statement indicating the following:

36 (1) The security remaining after any lawful deductions are
37 made.

38 (2) An itemization of any lawful deductions from any security
39 received.

1 (3) His or her election under paragraph (1) or (2) of subdivision
2 (h).

3 This subdivision does not affect the validity of title to the real
4 property transferred in violation of this subdivision.

5 (j) In the event of noncompliance with subdivision (h), the
6 landlord's successors in interest shall be jointly and severally
7 liable with the landlord for repayment of the security, or that
8 portion thereof to which the tenant is entitled, when and as
9 provided in subdivisions (e) and (g). A successor in interest of a
10 landlord may not require the tenant to post any security to replace
11 that amount not transferred to the tenant or successors in interest
12 as provided in subdivision (h), unless and until the successor in
13 interest first makes restitution of the initial security as provided in
14 paragraph (2) of subdivision (h) or provides the tenant with an
15 accounting as provided in subdivision (g).

16 This subdivision does not preclude a successor in interest from
17 recovering from the tenant compensatory damages that are in
18 excess of the security received from the landlord previously paid
19 by the tenant to the landlord.

20 Notwithstanding this subdivision, if, upon inquiry and
21 reasonable investigation, a landlord's successor in interest has a
22 good faith belief that the lawfully remaining security deposit is
23 transferred to him or her or returned to the tenant pursuant to
24 subdivision (h), he or she is not be liable for damages as provided
25 in subdivision (l), or any security not transferred pursuant to
26 subdivision (h).

27 (k) Upon receipt of any portion of the security under paragraph
28 (1) of subdivision (h), the landlord's successors in interest shall
29 have all of the rights and obligations of a landlord holding the
30 security with respect to the security.

31 (l) The bad faith claim or retention by a landlord or the
32 landlord's successors in interest of the security or any portion
33 thereof in violation of this section, or the bad faith demand of
34 replacement security in violation of subdivision (j), may subject
35 the landlord or the landlord's successors in interest to statutory
36 damages of up to twice the amount of the security, in addition to
37 actual damages. The court may award damages for bad faith
38 whenever the facts warrant such an award, regardless of whether
39 the injured party has specifically requested relief. In any action
40 under this section, the landlord or the landlord's successors in

1 interest shall have the burden of proof as to the reasonableness of
2 the amounts claimed or the authority pursuant to this section to
3 demand additional security deposits.

4 (m) No lease or rental agreement may contain any provision
5 characterizing any security as “nonrefundable.”

6 (n) Any action under this section may be maintained in small
7 claims court if the damages claimed, whether actual or statutory
8 or both, are within the jurisdictional amount allowed by Section
9 116.220 of the Code of Civil Procedure.

10 (o) Proof of the existence of and the amount of a security
11 deposit may be established by any credible evidence, including,
12 but not limited to, a canceled check, a receipt, a lease indicating the
13 requirement of a deposit as well as the amount, prior consistent
14 statements or actions of the landlord or tenant, or a statement under
15 penalty of perjury that satisfies the credibility requirements set
16 forth in Section 780 of the Evidence Code.

17 (p) The amendments to this section made during the 1985
18 portion of the 1985–86 Regular Session of the Legislature that are
19 set forth in subdivision (e) are declaratory of existing law.

20 *SEC. 3. Section 1954 of the Civil Code is amended to read:*
21 1954. A landlord may enter the dwelling unit only in the
22 following cases:

23 (a) In case of emergency.

24 (b) To make necessary or agreed repairs, decorations,
25 alterations or improvements, supply necessary or agreed services,
26 or exhibit the dwelling unit to prospective or actual purchasers,
27 mortgagees, tenants, workmen or contractors *or to make an*
28 *inspection pursuant to subdivision (f) of Section 1950.5.*

29 (c) When the tenant has abandoned or surrendered the
30 premises.

31 (d) Pursuant to court order.

32 Except in cases of emergency or when the tenant has abandoned
33 or surrendered the premises, entry may not be made during other
34 than normal business hours, unless the tenant consents at the time
35 of entry.

36 The landlord shall not abuse the right of access or use it to harass
37 the tenant. Except in cases of emergency, when the tenant has
38 abandoned or surrendered the premises, or if it is impracticable to
39 do so, the landlord shall give the tenant reasonable notice of his *or*
40 *her* intent to enter and enter only during normal business hours.

- 1 Twenty-four hours *advanced notice* shall be presumed to be
- 2 reasonable notice in absence of evidence to the contrary.

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